

INTERGOVERNMENTAL AGREEMENT

BETWEEN
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION
("AHCCCS")

And

THE COUNTY OF COCHISE, ARIZONA
("Public Entity")

For

Supplemental Payments to Disproportionate Share Hospitals

WHEREAS, the Arizona legislature, during its 50th Legislature, First Regular Session of 2011 enacted Senate Bill 1357 ("SB 1357") as Laws 2011, Chapter 234, which, at section 2, permits the Public Entity, as a political subdivision of the State of Arizona, to contribute public funds to be used as the Non-Federal share of supplemental Medicaid payments to disproportionate share hospitals ("DSH payments"), contingent upon the approval by AHCCCS and the Centers for Medicare and Medicaid Services; and,

WHEREAS, the Public Entity, is authorized to provide for the care and maintenance of the sick of the county and to contract for provision of health services for County residents and is authorized to contract for provision of health services to its residents, funded through the Department of Health Services with federal or state monies, A.R.S. § 11-25.15, A.R.S. § 11-251.18; and

WHEREAS, AHCCCS is authorized to make DSH payments under A.R.S. § 36-2903.01(P); and

WHEREAS, AHCCCS and the Public Entity are authorized by A.R.S. § 11-951 et seq. as well as SB 1357 to enter into Intergovernmental Agreements to jointly exercise powers common to the parties or for cooperative action pertaining to reimbursement or advancements of public funds for services performed; and

WHEREAS, the Public Entity and AHCCCS wish to enter into this Agreement in order to permit the Public Entity to provide the Non-Federal Share of DSH payments.

NOW, THEREFORE, the Public Entity and AHCCCS (collectively, the "Parties"), pursuant to the above and in consideration of the matters hereinafter set forth, do mutually agree as follows:

1. DEFINITIONS: Unless otherwise defined in this Agreement, all terms have the same meaning as set forth in Title 36 of the Arizona Revised Statutes or Title 9, Chapter 22, of the Arizona Administrative Code (A.A.C.) as appropriate.
 - 1.1. Agreement: This document, together with any and all attachments, appendices, exhibits, schedules and future amendments as agreed to by the Parties. The term "Agreement" is synonymous with "Intergovernmental Agreement."
 - 1.2. AHCCCS: Arizona Health Care Cost Containment System Administration, an agency of the State, which administers the Medicaid program under Title XIX of the Social Security Act in Arizona.
 - 1.3. CFR: Code of Federal Regulations – the official compilation of Federal rules and requirements.
 - 1.4. Public Entity: The County of Cochise, Arizona.
 - 1.5. CMS: The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services.

- 1.6. Day: A calendar day, unless specified otherwise.
- 1.7. DSH: Disproportionate Share Hospital as defined in 42 U.S.C. § 1396r-4 and the Special Terms and Conditions of Arizona's Demonstration Project for Medicaid as approved by the Secretary of the United States Department of Health and Human Services under the authority of 42 U.S.C. § 1315.
- 1.8. DSH Payments means a supplemental payment by AHCCCS acting as the State Medicaid Agency to a hospital that qualifies as a DSH pursuant to the Special Terms and Conditions of Arizona's Demonstration Project for Medicaid as approved by the Secretary of the United States Department of Health and Human Services under the authority of 42 U.S.C. § 1315.
- 1.9. Eligible Hospital(s): Hospitals that AHCCCS has determined meet the requirements of and qualify as a Disproportionate Share Hospital and that are listed in Attachment A to this Agreement.
- 1.10. FFP or Federal Financial Participation: the federal monies that AHCCCS claims from CMS for the Federal share of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act.
- 1.11. State: The State of Arizona.
- 1.12. Non-Federal Share: The portion of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act, for which FFP cannot be claimed and which meet the requirements of 42 C.F.R. Part 433, Subpart B.
2. PURPOSE: The purpose of this Agreement is to set forth the procedures under which the Public Entity will, at its discretion and contingent upon AHCCCS and CMS approval, transfer public funds for use as the Non-federal Share of DSH Payments under this Agreement for hospital services rendered from October 1, 2011 through September 30, 2012. It is the intent of the parties that the procedures herein fully comply with Federal and State laws, rules and regulations.
3. ELIGIBILITY REQUIREMENTS. Monies transferred by the Public Entity and claimed by AHCCCS as Medicaid expenditures under this Agreement may only be used for permissible DSH Payments and distributed to Eligible Hospitals. AHCCCS will determine which Eligible Hospitals are eligible for DSH Payments for hospital services from October 1, 2012 through September 30, 2013 and the amount of any distribution. Eligibility and distribution amount determinations for DSH Payments will be consistent with applicable Federal and State statutes, regulations, rules and the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315.
4. AHCCCS RIGHTS AND OBLIGATIONS.
 - 4.1. Receipt and Distribution of Funds. Consistent with the Special Terms and Conditions of Arizona's Medicaid Demonstration Project as approved by CMS under 42 U.S.C. § 1315, and state and federal laws and regulations, AHCCCS will use the funds transferred by the Public Entity to claim FFP and distribute an amount equal to the sum of the Non-Federal Share transferred by the Public Entity under this Agreement and the corresponding FFP to Eligible Hospitals as DSH Payments for hospital services provided from October 1, 2012 through September 30, 2013 in the amounts shown on Attachment A to this Agreement. Both the Non-Federal Share and the FFP under this Agreement may only be used for DSH payments to Eligible Hospitals.
 - 4.2. AHCCCS Payment Recoupment from Eligible Hospital. AHCCCS, upon prior written notice to the Eligible Hospitals, will require Eligible Hospitals receiving DSH payments as a result of this Agreement, to reimburse AHCCCS upon demand and, if not reimbursed

upon demand, AHCCCS will deduct from any future payments from AHCCCS otherwise due to the Eligible Hospital(s) any amount:

- 4.2.1. Received by the Eligible Hospital from AHCCCS as DSH Payments that were based on inaccurate information provided by the Public Entity or the Eligible Hospital, that are found to be for an excluded expense, or that otherwise result in an inaccurate payment;
 - 4.2.2. Paid by AHCCCS for which an Eligible Hospital's books, records, and other documents are not sufficient to clearly confirm that the Eligible Hospital was entitled to the DSH payments;
 - 4.2.3. Paid by AHCCCS for which the Public Entity's books, records, and other documents are not sufficient to clearly confirm that the funds transferred to AHCCCS are public funds which meet the requirements of 42 C.F.R. Part 433, Subpart B;
 - 4.2.4. Identified as a payments that may not be claimed for FFP as the result of a CMS financial management review, deferral, disallowance, or audit.
- 4.3. AHCCCS is responsible for satisfying CMS requirements regarding reporting, adjusting claims for or reimbursing FFP, as necessitated by a recoupment as noted in Paragraphs 4.1 and 4.2 of this Agreement, or applicable Federal laws, rules and regulations. This provision does not relieve the Public Entity or an Eligible Hospital from their obligations under Paragraph 4.2.1 or the obligations of under Paragraphs 6.2 and 6.3.
- 4.4. In the event AHCCCS recoups DSH Payments from an Eligible Hospital, AHCCCS will promptly return to the Public Entity, without demand, that portion of the recoupment representing the Non-Federal Share contributed by the Public Entity under this Agreement.
- 4.5. Eligible Hospitals will receive and retain one hundred percent (100%) of all DSH payments and except as provided in this Agreement or as required by federal law or regulatory authority Eligible Hospitals are not required to return any portion of the DSH payment to the State, AHCCCS, or the Public Entity.
5. THE PUBLIC ENTITY'S RIGHTS AND OBLIGATIONS.
 - 5.1. The Public Entity may, in its sole discretion, transfer to AHCCCS the amount identified in Attachment A to this Agreement which amount shall be used pursuant to Section 4.1 above. The Public Entity warrants that the Non-Federal Share transferred by the Public Entity to AHCCCS is derived from the public sources identified in Attachment A to this Agreement.
 - 5.2. Within fifteen (15) business days of AHCCCS receiving the funds transferred by the Public Entity under this Agreement, AHCCCS will make DSH Payments to the Eligible Hospitals in the amounts shown on Attachment A to this Agreement pursuant to Section 4.1 hereof without any deductions or set offs.
 - 5.3. Within fifteen (15) days after the date of distribution of the DSH payments to the Eligible Hospitals, AHCCCS will provide the Public Entity a report showing the actual distribution of funds to the Eligible Hospitals.
6. COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION
 - 6.1. Public Entity warrants that, consistent with 42 C.F.R. Part 433, Subpart B, no portion of the funds transferred to AHCCCS are derived from (1) direct or indirect provider-related

donations (in cash or in kind), other than bona fide provider-related donations or (2) health care-related taxes other than as permitted in Subpart B.

- 6.2. Public Entity agrees to provide AHCCCS with supporting documentation that provides a detailed description (including but not limited to the amount, source, and uses) and the legal basis for (1) each direct or indirect provider-related donation (in cash or in kind) received by the Public Entity including all bona fide and presumed-to-be bona fide donations, and (2) all health care-related taxes collected.
- 6.3. If Public Entity fails to provide supporting documentation required in section 6.2 of this Agreement, or if any funds transferred by Public Entity are determined to be derived from provider-related donations or health care-related taxes such that CMS adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS immediately, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the impermissible provider-related donation and/or health care-related tax. Immediate payment by the Public Entity does not relieve AHCCCS of its authority under section 4.2 of this Agreement to pursue recoupment from the Eligible Hospitals or its obligation under section 4.4 to return to the Public Entity the Non-Federal portion of amounts recouped from the Eligible Hospitals.
- 6.4. Public Entity certifies that, consistent with 42 C.F.R. § 433.51(c), the funds transferred to AHCCCS under this Agreement are not federal funds, or are federal funds authorized by federal law to be used to match federal funds. If any funds transferred to AHCCCS under this Agreement are determined to be federal funds such that the Center for Medicare and Medicaid adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the transfer of federal funds.
- 6.5. Public Entity certifies that the funds transferred to AHCCCS as described in this Agreement are made voluntarily and that neither the State nor AHCCCS has through statute, rule, or otherwise required the Public Entity to provide the funding.

7. GENERAL PROVISIONS.

- 7.1. Entire Agreement. This document, its attachments and appendices, including any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the Parties, and supersedes all other understandings, oral or written.
- 7.2. Exercise of Rights. Failure to exercise any right, power or privilege under this Agreement will not operate as a waiver thereof, nor will a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.
- 7.3. Contract Term. Notwithstanding the facts that certain AHCCCS or Public Entity obligations under this Agreement occur after the Term hereof, the parties agree that the Term of this Agreement is for one (1) year consistent with the period of time from October 1, 2012 through September 30, 2013 and is not effective until signed by both parties.
- 7.4. Compliance with Laws, Rules and Regulations. AHCCCS, the Public Entity, Eligible Hospitals, and their subcontractors must comply with all applicable Federal and state laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.
 - 7.4.1. Non-Discrimination. The parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race,

creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this Agreement. The Parties shall comply with the provisions of Arizona Executive Order 2009-09, incorporated into this Agreement by reference, as if set forth in full herein.

- 7.4.2. ADA. The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101336, 42 U.S.C. 1210112213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 7.5. Choice of Law. The laws and regulations, of the State of Arizona govern the rights of the Parties, the performance of this Agreement, and any disputes arising from the Agreement.
- 7.6. Compulsory Arbitration. Any action relating to this Agreement must be brought by arbitration to the extent required by A.R.S. § 12-1518 or in an appropriate court. Any arbitration award will be enforced in an appropriate court.
- 7.7. Amendments. This Agreement, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as the Agreement.
- 7.8. Notice. Any notice required by the terms of the Agreement and any questions regarding the duties and obligations of this contract shall be directed to:

7.8.1. For AHCCCS:

Michael Veit, Contracts Administrator
AHCCCS
701 E. Jefferson, MD 5700
Phoenix, AZ 85034
Phone: 6024174762
Fax: 6024175957
Email: Michael.Veit@azahcccs.gov

7.8.2. For the Public Entity:

County Administrator
County of Cochise
1415 Melody Lane
Bisbee, AZ 85603
Phone: 5204329469
Fax: 5204329479

- 7.8.3. Notwithstanding section 7.7 of this Agreement, AHCCCS and the Public Entity will give notice by regular mail or any other means reasonably anticipated to provide actual notice to the other party of any change of the address, telephone number, name of the authorized signatory or designee; or name and/or address of the person to whom notices are to be sent.
- 7.9. Termination. Pursuant to A.R.S. § 38-511, either party to this Agreement may terminate this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when AHCCCS or the Public Entity receives written notice of the cancellation unless the notice specifies a later time.
- 7.10. Records. The Parties, including Eligible Hospitals, agree to retain all financial books, records, and other documents and will contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of the Agreement

for a period of five (5) years after the completion of the Agreement. All records are subject to inspection and audit by the Parties at reasonable times. Upon request, the Parties will produce a legible copy of any or all such records.

7.11. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remaining provisions continue to be valid and enforceable to the full extent permitted by law.

7.12. Indemnification. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

7.13. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to (1) create duties or obligations to or rights in Eligible Hospitals or any other persons or entities not parties to this Agreement or (2) effect the legal liability of either party to the Agreement with respect to Eligible Hospitals or any other persons or entities not parties to this Agreement.

7.14. No Joint Venture. Nothing in this Agreement is intended to create a joint venture between or among the Parties, including the Eligible Hospitals, and it will not be so construed. Neither AHCCCS' nor the Public Entity's employees will be considered officers, agents or employees of the other or be entitled to receive any employment related fringe benefits from the other.

NOW THEREFORE, AHCCCS and the Public Entity agree to abide by the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year specified below.

THE COUNTY OF COCHISE, ARIZONA
Public Entity ("Public Entity")

Arizona Health Care Cost Containment System
("AHCCCS")

By: Ann English, Chair, Board of Supervisors

By: Michael Veit, Contract Administrator

Date: _____

Date: _____

In accordance with A.R.S. § 11-952, undersigned counsel have determined that this Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona, including but not limited to A.R.S. §§ 36-2903 et seq.

Counsel for Public Entity

Counsel for AHCCCS

Date: _____

Date: _____

ATTACHMENT A

To The Intergovernmental Agreement
Between
The Arizona Health Care Cost Containment System Administration
And
THE COUNTY OF COCHISE, ARIZONA
(the "Public Entity")

Pursuant to the Agreement: (1) the Public Entity has designated the hospitals listed below as Eligible Hospitals, (2) the Public Entity has agreed to transfer public funds in the amount specified below as the Non-Federal Share of DSH Payments to each Eligible Hospital; and AHCCCS has agreed to use the transferred funds to make the DSH Payments specified below:

Eligible Hospital	Non-Federal Share	DSH Payment
Southeast Arizona Medical Center	\$44,339.45	\$135,594.65
Totals:	\$44,339.45	\$135,594.65

Pursuant to Paragraph of the Agreement, the Public Entity warrants that the amounts transferred under the Agreement are derived from the following public sources:

Source	Amount
County of Cochise	\$44,339.45
Total:	\$44,339.45